IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of case

Appeal from Order No. 02 of 2005

Date of decision: 1st November, 2006

A.F.R. (Approved for reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 02 of 2005

1. Shobhan Singh S/o Udya Singh.
2. Smt. Narayani Devi W/o Sri Shobhan Singh,
   Both R/o village Nagarasu,
   Patwari Circle Nagarasu,
   Tehsil Rudraprayag,
   District Rudraprayag. … Appellants

Versus

1. New India Insurance Company Ltd.,
   through its Regional Manager,
   Ranipur Road, Haridwar.
2. Shanshak Vaishnav S/o Mahesha Chandra Vaishnava,
   Owner of Vehicle No. UP06/1536 (Bus),
   R/o Village and Post Pokhari (Bamnath),
   Patwari Circle Pokhari, Teshil Pokhari,
   District Chamoli. …. Respondents

Mr. G.S. Negi, Advocate for the appellants.
Mr. T.A. Khan, Advocate for respondent No. 1.
Mr. P.S. Danu, Advocate for respondent No. 2.

JUDGMETN

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

The appellants are seeking enhancement of the compensation awarded by the Motor Accident Claim Tribunal / District Judge, Rudraprayag vide Award dated 06.10.2004 passed in M.A.C.P. No. 5 of 2004.

2. The claimants, who are unfortunate parents of deceased Pushkar Singh, claimed compensation of Rs. 10,00,000/- (Rupees Ten Lakhs only) for his death in the motor accident on 25.10.2003 when the Bus bearing registration No. U.P. 06 1536, in which he was travelling, met with an accident due to the rash and negligent driving of its driver resulting in the instantaneous death of Pushkar Singh on the spot itself. The claimants pleaded that their son Pushkar Singh

who was aged about 27 years, used to earn Rs. 5,000/- per month as Cable Operator.

3. The insurer and the owner of the offending vehicle Bus contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that the accident occurred due to sudden mechanical failure and as such, the driver was not responsible for the accident. The insurer, on the other hand, pleaded that the Bus was being plied in breach of the policy conditions and the driver was not holding a valid driving license.

4. The claimants examined P.W. 1 Shobhan Singh and P.W. 2 Sandeep Singh Negi in support of their claim, whereas the insurer and the owner of the Bus did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that claimants' son Pushkar Singh died on account of the injuries sustained by him in the motor accident on 25.10.2003; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants.

6. The Tribunal found that the evidence led by the claimants about the income of the deceased was not reliable. The Tribunal, therefore, awarded lump sum of Rs. 1,20,000/- as compensation to the claimants for the death of their son Pushkar Singh. The Tribunal further directed the insurer to pay interest on the amount of compensation at the rate of 8% per annum in the event of its failure to deposit the amount of compensation on or before 30.11.2004. The record reveals that the amount of compensation was deposited by the insurer on 09.11.2004.

7. Mr. G.S. Negi, the learned counsel for the appellants submitted that the Tribunal has erred in awarding low compensation of Rs. 1,20,000/- only to the claimants for the death of their son aged about 27 years. The learned counsel, placing reliance on the dictum of the Apex Court in the case of **Manju Devi and another Vs. Musafir Paswan and another** reported in **2005 (1) TAC 609 (SC)** submitted that the Tribunal ought to have awarded at least Rs. 2,25,000/- as compensation to the claimants.

8. Mr. T.A. Khan, the learned counsel for respondent No. 1 New India Insurance Company Ltd., on the other hand, supported the Award and submitted that as the claimants could not establish the income of the deceased as pleaded by them, the Tribunal was left with no other option but to award lump sum compensation.

9. The findings recorded by the Tribunal that claimants' son Pushkar Singh died on account of the injuries sustained by him in the motor accident on 25.10.2003; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. True, the evidence led by the claimants about the income of the deceased is not of clinching nature and as such, we do not find any fault in the approach of the Tribunal in discarding the evidence led by the claimants in that behalf. Nevertheless, the lump sum compensation of Rs. 1,20,000/- awarded by the Tribunal, in our opinion, is too low and deserves to be enhanced suitably.

11. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just

and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damaged is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

12. When the income of the deceased could not be established by the claimants, the Tribunal ought to have assessed the compensation on the basis of the notional income. The notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994.

13. Section 163-A of the Vehicles Act reads as follows:

> "163-A. Special provisions as to payment of compensation on structured formula basis. – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

14. Above-quoted sub-section (3) of Section 163-A casts a duty on the Central Government to amend the Second Schedule from time to time keeping in view the cost of living. As the Second Schedule has not been amended by the Central Government in spite of the lapse of period of more than 10 years, we deem it proper to take into consideration the steep hike in the price index of the essential commodities and the resultant increase in the cost of living. If the erosion in the purchase value of Rupee during the period between 1994 and 2003, the year of the accident in the present case, is taken into consideration, the notional income of Rs.15,000/- prescribed in the Second Schedule in the year 1994, would, in the year 2003, come to Rs. 36,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 36,000/- per annum.

15. As deceased Pushkar Singh was supporting his old parents aged about 70 years and 61 years and his younger brothers, we deem it proper to deduct only 1/3rd of Rs. 36,000/- as his personal expenses.

By deducting Rs. 12,000/- from his annual income of Rs. 36,000/-, the claimants' dependency is assessed at Rs. 24,000/- per annum.

16. The Apex Court, in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731**, has held that in those cases, where the claimants are parents of the deceased, the multiplier should never exceed '10'. In the present case, deceased Pushkar Singh was aged about 27 years on the date of the accident, whereas his father Shobhan Singh was aged about 70 years and his mother Smt. Narayani Devi was 61 years of age. There is no material on record even to suggest that the parents of the deceased had any income of their own. In these circumstances, we are of the opinion that the multiplier of '8' would be appropriate in the case.

17. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '8', the compensation works out to Rs.1,92,000/-. The claimants are further entitled to Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Estate. Thus, the claimants become entitled to receive a total sum of Rs. 2,02,000/- as compensation for the death of their son Pushkar Singh in the motor accident on 25.10.2003.

18. The claimants are further entitled to interest on the amount of compensation. The accident in the present case took place on 25.10.2003 and the claim petition was filed on 09.03.2004. The impugned Award was passed by the Tribunal on 06.10.2004 and the insurer of the Bus deposited the amount awarded by the Tribunal on 09.11.2004. Considering all the above-mentioned relevant factors, we quantify the amount of interest at Rs. 23,000/-.

19. Thus, the claimants become entitled to receive a total sum of Rs. 2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) [Rs. 2,02,000/- towards Compensation + Rs. 23,000/- towards Interest].

20. The amount of Rs. 2,25,000/-, when examined in the context of the dictum of the Apex Court in the case of **Manju Devi and another Vs. Musafir Paswan and another** reported in **2005 (1) TAC 609 (SC),** we are satisfied is just and proper compensation in the facts and circumstances of the present case.

21. For the foregoing reasons, the appeal filed by the claimants u/s 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 1,20,000/- awarded by the Tribunal is enhanced to Rs. 2,02,000/- (Rupees Two Lakhs and Two Thousand only) with further quantified interest of Rs. 23,000/- (Rupees Twenty Three Thousand only). First respondent New India Insurance Company Ltd. is directed to deposit the enhanced amount and the quantified interest before the concerning Claims Tribunal within a period of two months from today. The entire enhanced amount and the amount of quantified interest shall be released in favour of the claimants (parents of deceased Pushkar Singh) only.

22. No order as to costs.

(Rajesh Tandon, J.) 01.11.2006

(Rajeev Gupta, C. J.) 01.11.2006

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